

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SIX**

U.S. Foodservice, Inc.¹

Employer

and

Case 6-RC-12776

Teamsters, Chauffeurs, Warehousemen and
Helpers, Local Union No. 30 a/w International
Brotherhood of Teamsters,

Petitioner

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

The Employer, U.S. Foodservice, Inc., operates a food service distribution center in Greensburg, Pennsylvania, where it employs about 188 employees engaged in warehousing and transportation functions. The Petitioner, Teamsters, Chauffeurs, Warehousemen and Helpers, Local Union No. 30 a/w International Brotherhood of Teamsters, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of warehouse employees. A hearing officer of the Board held a hearing and the Employer filed a timely brief with me, while the Petitioner argued orally on the record.

As evidenced at the hearing and in the parties' arguments, the parties disagree on the scope of the unit, with the Petitioner seeking a warehouse unit and the Employer asserting that unit must include all employees providing warehouse and transportation functions, as well as other employees performing related functions.

More specifically, the Petitioner seeks a unit, as amended at the hearing, comprised of warehouse employees, and the clerical staff that supports their work, contending that these

¹ The name of the Employer appears as amended at the hearing.

employees share a community of interest separate and distinct from the other employees. The Employer, on the other hand, contends that the only appropriate unit consists of all warehouse employees and drivers, as well as additional employees performing related functions, based on the functional integration of its operation and the interaction among its employees, which results in these employees sharing a community of interest. The unit sought by the Petitioner has approximately 81 employees, while the unit the Employer seeks would include about 188 employees.

I have considered the evidence and the arguments presented by the parties on the issues presented. As discussed below, I have concluded that a unit of warehouse employees is appropriate. I have also concluded that two classifications of employees that the Petitioner would exclude, the produce QC specialist² and the inventory control clerk, share such a strong community of interest with the petitioned-for employees that these classifications should be properly included in the warehouse unit. Finally, I have determined that the finance driver check-in clerk shall be permitted to vote subject to challenge in the election directed herein. The Petitioner has indicated that it is willing to proceed to an election in any unit found appropriate herein, except a unit including drivers. Accordingly, I am directing an election in a unit that consists of approximately 83 employees.

To provide a context for my discussion of the issues, I will first provide an overview of the Employer's operations. Then, I will present in detail the facts and reasoning that supports each of my conclusions on the issues.

I. OVERVIEW OF OPERATIONS

The Employer operates a food service distribution center in Greensburg, Pennsylvania,³ where it employs a total of about 319 employees. The Greensburg warehouse is stocked with

² It appears from the record that QC refers to quality control.

³ Although the Employer operates on a nationwide basis, solely involved herein is the Greensburg facility.

about 12,000 different products, categorized as dry, freezer and cooler, which are stored in corresponding areas of the warehouse. From its Greensburg warehouse, the Employer serves about 4000 customers, delivering about 46,000 to 48,000 cases of product to customers daily. The area serviced by the Employer extends from Annapolis, Maryland in the east to Columbus, Ohio in the west, and from outside of Erie, Pennsylvania in the north to Beckley, West Virginia in the south.

The Employer's Director of Operations at the Greensburg facility is Vince Renze, who reports to Vice President of Operations for Western Pennsylvania Brian Murphy. Reporting directly to Renze are Warehouse Manager Jeff Victor and Transportation Manager David Reese. Reporting to Warehouse Manager Victor are the Day Warehouse Supervisors and the Night Warehouse Supervisors. Reporting to the Day Warehouse Supervisors and Night Warehouse Supervisors are all of the warehouse employees sought by the Petitioner.

Reporting to Transportation Manager Reese are the Driver Supervisors, the transportation clericals, and the garage personnel. Reporting to the Driver Supervisors⁴ are the drivers. Further, reporting directly to Director of Operations Renze are maintenance and sanitation employees. Finally, reporting indirectly to Renze are finance clericals and the produce QC specialist. It is the Employer's contention that all of the employees mentioned above must also be included in the unit.

The Employer normally operates Monday⁵ through Friday, except recently it has started to receive produce on Sunday mornings. In general, the day shift starts around 5 to 6 a.m. and the night shift starts around 5 p.m.

⁴ The parties have stipulated, and I find, that all of the supervisory personnel identified herein are statutory supervisors in that they responsibly direct and assign employees, discipline them and recommend discharge.

⁵ The warehouse employees work Sunday night.

The Employer's facility consists of a 320,000 square foot warehouse building and an adjacent truck garage. Most of the warehouse space holds dry goods; there is also a 64,000 square foot freezer and a 40,000 square foot cooler. The loading dock has areas for dry product, freezer product and cooler product; there are 23 doors on the loading dock.

On the ground floor of the warehouse building are offices for inside sales, operations and transportation. There is also a drivers' area separated from the warehouse by 4-foot high concrete block walls. There is a breakroom off of the dock office, and a smaller breakroom in the back of the facility. On a second floor of the building, above a portion of the warehouse, are administrative offices for purchasing, sales, finance, and Human Resources. As noted, a building adjacent to the warehouse houses the truck garage.

As a general overview, the Employer's operations consists of receiving products from vendors, putting away products on slots (or racks), selecting products to fill customer orders, and delivering products to customers. In general, products are received and put away during the day, and products ordered are delivered to customers during the day. Products are generally selected and loaded on trucks at night.

Specifically, products are received at the Greensburg warehouse from vendors, from other Employer facilities, or from backhauls by the Employer's drivers.⁶ These inbound products are received at the appropriate dock: dry, cooler or freezer dock. Then, these inbound products are either unloaded by the drivers or by subcontracted employees, called "lumpers". Loads are broken down according to the Employer's specifications, checked to ensure that they are satisfactory, and the products are entered into the Employer's computer system. The products are put away into slots, which are designated as pick slots (1 to 3 bays high) or reserve slots (over 3 bays high).

⁶ A backhaul occurs when, after a driver has completed deliveries to customers, instead of returning to the warehouse with an empty truck, the Employer schedules the driver to pick up inbound product and haul it back to the warehouse.

Customer orders for products are usually made by purchase order received by the sales force and inputted into the Employer's computer system. There are cut-off times for the receipt of orders to ensure timely delivery. Unanticipated customer needs which cannot be processed through regular purchase orders are handled by the Employer's will-call process. Will-call orders make up about 10 percent of all orders. About 90 percent of the will-call orders are picked up at the warehouse by the customer; about 10 percent of the will-call orders are delivered to customers outside of the regular delivery routes.

Throughout the day, delivery routes and truck loads are developed. At night, the products to fill customer orders are selected from the slots in the warehouse and placed on pallets. The pallets are wrapped and staged at the cooler or freezer docks. The pallets are then loaded onto the trucks for delivery to customers the following day. Currently, the number of delivery routes varies between about 60 and 72 per day.

When the products are delivered to the customers, they are off-loaded from the truck using a two-wheeled dolly, and the appropriate paperwork is completed. At the end of the delivery shift, the truck returns to the warehouse, and the driver's paperwork is processed.

At times, orders are refused by customers for various reasons, and the product is returned to the warehouse. On average, 1000 cases per week are refused and returned to the warehouse. In this situation, it must be determined if product can be resold. If so, the product is re-entered into the computer system and returned to the warehouse; if not, the product is discarded.

II. AGREED-UPON POSITIONS

The parties are in agreement that a number of warehouse positions must be included in the unit. These positions are: receiver, receiver/lift operator, receiver/slotter, will-call selector, warehouse driver check-in clerk, day warehouse clerk, truck builder, selector, selector/lift operator, selector/loader, selector/short runner, and night warehouse clerk. These positions are described separately below.

A. Receiver

The Employer employs three receivers. They work daylight and report to the Day Warehouse Supervisors, Scott Kloss and Rick Underwood. The receivers work on the docks and use a RF (radio frequency) scan gun to scan inbound product into the Employer's computer system. They put the appropriate receiving labels on the inbound pallets.

B. Receiver/Lift Operator

The Employer employs 15 receiver/lift operators. They work daylight and report to the Day Warehouse Supervisors, Kloss and Underwood. They operate forklifts to move inbound product from the docks and put away the product into reserve slots. They also replenish the lower pick slots from the upper reserve slots.

C. Receiver/Slotter

The Employer employs one receiver/slotter. He works daylight and reports to the Day Warehouse Supervisors, Kloss and Underwood. While the record does not disclose the specific duties of this employee, the Employer's position titles are generally indicative of the job functions, and thus, it would appear that this employee has functions related to both receiving and product slots.

D. Will-Call Selector

The Employer employs one will-call selector. He works daylight and reports to the Day Warehouse Supervisors, Kloss and Underwood. He selects product from the pick slots and manually loads it onto pallets, moving through the warehouse on a riding jack. He performs the same functions performed by the selectors filling customer orders placed through the regular purchase order system, but does so for will-call orders.

E. Warehouse Driver Check-In Clerk

The Employer employs one warehouse driver check-in clerk who works daylight and reports to the Day Warehouse Supervisors, Kloss and Underwood. The parties are in agreement that this position is in the unit. However, the Employer also employs a driver check-

in clerk who also works daylight and reports to the finance department. The parties disagree over the inclusion of this latter position in the unit. The Employer asserts that the finance driver check-in clerk must be included in the unit, while the Petitioner seeks to exclude this position.

The record discloses the names of the two employees performing check-in functions, and provides some specifics regarding the duties each named employee performs. However, the record does not identify the position that each named employee holds, and the evidence on this point is not clear. Specifically, the record discloses that one driver check-in clerk, Genny Close, receives cash and checks from the returning drivers, counts the money, makes a cash deposit, and enters credits into the Employer's computer system,⁷ which would make it seem that she holds the finance position in dispute.

Further, the record discloses that the other driver check-in clerk, Frank Van Curen, evaluates returned product to determine if the returned product can be resold and restocks that product. Specifically, when the drivers return to the warehouse with product the customer has refused to accept, Van Curen uses a riding pallet jack to return the product to the pick slots. If there is a large quantity of returned product, the warehouse employees will assist in restocking. In addition, Van Curen spends about 10 to 20 percent of his workday counting product to assist the inventory control clerk. Given that Van Curen performs hands-on warehouse work, it would appear that he holds the warehouse clerical position that the parties agree should be in the unit.

However, the record evidence is that Van Curen reports to Inventory Control Manager Beth Zubalik, but has a dotted line reporting relationship to Director of Operations Vince Renze, which would suggest that Van Curen is the finance check-in clerk. In addition, the record

⁷ Problems with the product which the driver has reported on the credit slip may lead to follow-up by management.

evidence is that Close reports to Day Warehouse Supervisor Underwood, which would suggest that Close is the warehouse check-in clerk.⁸

F. Day Warehouse Clerk

The Employer employs three day warehouse clerks. They work daylight and report to the Day Warehouse Supervisors, Kloss and Underwood. These warehouse clerks interact primarily with the inbound drivers, either drivers coming from vendors with product, or drivers from other sister facilities delivering product, or backhauls by the Employer's Greensburg delivery drivers. The warehouse clerks tell the inbound drivers where they should park for the trucks to be off-loaded, and the warehouse clerks receive paperwork from the inbound drivers. One of these warehouse clerks handles the will-call orders.

G. Truck Builder

The Employer employs one truck builder. He works daylight and reports to the Day Warehouse Supervisors, Kloss and Underwood. The truck builder determines the make-up of the pallets and the pallet configurations in the trucks using software programs on the Employer's computer system. In doing this, he considers such factors as the volume of the truck and weight limits and the order of the stops on the route, which have been determined by the router, whose duties are described below. The truck builder generates the pick (or selection) labels used by the selectors to pick the product. He also generates the load maps which are used by the selector/ loaders to load the trucks and by the drivers to know how the trucks have been loaded.

H. Selector

The Employer employs 45 selectors. They work nights and report to the Night Warehouse Supervisors, Todd Clay, Lonie Webb and Tom Lindquist. The selectors pull the

⁸ The Employer, in its post-hearing brief, does not differentiate between the duties performed by the two positions.

pick labels from a box, and using the labels and a software program, move through the warehouse picking product from the pick slots. They ride pallet jacks following a selection path through the warehouse, stop at the appropriate slot, manually remove the cases of product from the slot and place them on a pallet, labeling each case as they load it. They then take the loaded pallets to the loading dock where they manually wrap the pallets in plastic. As can be seen by the number of selectors employed, they form the core of the warehouse workforce, and are responsible for manually loading 46,000 to 48,000 cases of product each night.

I. Selector/Lift Operator

The Employer employs four selector/lift operators. They work nights and report to Night Warehouse Supervisors Clay, Webb and Lindquist. Using a forklift, the selector/lift operators are responsible for replenishing the pick slots by moving product from the upper reserve slots to the lower pick slots. The Employer's computer software tracks when the pick slots need to be replenished.

J. Selector/Loader

The Employer employs three selector/loaders. They work nights and report to Night Warehouse Supervisors Clay, Webb and Lindquist. The loading dock has 23 doors, and the selector/loaders have specific door assignments. Using riding pallet jacks, they load the wrapped pallets on trucks. They put trailer labels on pallets and use the load map generated by the truck builder to load the product on the trucks in the correct configuration.

K. Selector/Short Runner

The Employer employs one selector/short runner. He works nights and reports to Night Warehouse Supervisors Clay, Webb and Lindquist. The selector/short runner is responsible for obtaining products that were not in the pick slots when the selector was filling an order. The selector/lift operator will replenish the product, and then the selector/short runner will get the replenished product. The selector/short runner may be able to give the product to the selector if the selector is still building the pallet, or the selector/short runner may be able to give the

product to the loader if the loader is still loading the truck. Otherwise, the selector/loader may load the product directly on the truck if the truck is still at the dock. If the product cannot be loaded on the truck, the product may have to be delivered to the customer outside of the regular delivery route.

L. Night Warehouse Clerk

The Employer employs three night warehouse clerks. They work nights and report to Night Warehouse Supervisors Clay, Webb and Lindquist. They print pick labels generated by the truck builder, separate the labels, attach any special instructions, and put the labels in the box from which the selectors get the labels. The night warehouse clerks also put information from the load map on the shipping schedule. They prepare the final invoices which are given to the customers by the drivers.

III. DISPUTED POSITIONS

In addition to the positions described above, which the parties agree should be included in the unit, the Employer contends that a number of other positions must also be included in the unit. These disputed positions are: delivery driver, yard jockey, yard jockey/special run, transportation clerk, traffic dispatcher, router, fleet mechanic, fueler, finance driver check-in clerk, inventory control clerk, produce QC specialist, building/grounds worker, and maintenance mechanic. These positions are described separately below.

A. Delivery Driver

The Employer employs 83 delivery drivers. For the most part, the delivery drivers work days and report to Driver Supervisors Harry Fedeoff and Mark Dalton.⁹ The delivery drivers bid on their routes.

Typically, each delivery driver reports one half hour before his scheduled “pull time” (the time he starts driving). Upon arriving at the warehouse, he punches into the Kronos time clock

⁹ Some delivery drivers start as early as midnight.

system, discussed below. He also enters a code into the computer terminal in the drivers' area in order to clock into Xata, the Employer's on-board computer program which tracks the actual hours worked.¹⁰

Each driver then retrieves his daily paperwork from a mail slot in the drivers' area.¹¹ The paperwork includes the load map, the invoices, any special instructions, any necessary directions, the daily vehicle inspection report, as well as the truck keys. The driver consults the shipping schedule to locate where the loaded truck has been parked by the yard jockey.

The driver then picks up a two-wheeled dolly from a locked shed, and goes to the loaded truck in a parking area away from docks. At the truck, the driver logs into Xata and performs a pre-trip inspection. At this time, he checks the loaded product. If the driver becomes aware of a problem with the way the truck is loaded, he may speak directly to the loader and/or may assist in reloading the truck.

A delivery truck holds 12 to 18 pallets, and the driver makes multiple stops at customers all day. The driver refers to the labels on the cases when making deliveries. He typically off-loads the truck by himself using the two-wheeled dolly. After the delivery is completed, the driver has the customer sign the invoice. If there is a problem with the delivery or if the customer refuses delivery for some reason, the driver fills out a credit slip. If the driver experiences problems during the day, he may contact the warehouse.

When the driver returns to the warehouse, he fuels the truck if necessary, and reports to the driver check-in clerk. If there were any issues with the load, the driver may make a notation on the load map which he gives to the driver check-in clerk or leaves it in a box, or he may otherwise inform management about the problem. If the driver has returned with checks or cash, he turns these into the driver check-in clerk. If the driver has returned with refused product, he reports this

¹⁰ This software also monitors the location of the truck.

¹¹ A warehouse clerk places these items in the mail slots.

to the driver check-in clerk. The driver also unloads pallets and sweeps out the truck. In addition to making deliveries, drivers also backhaul products to the warehouse.

B. Yard Jockey

The Employer employs two yard jockeys. The yard jockeys report to Driver Supervisors Fedeoff and Dalton. The yard jockeys are required to possess Commercial Drivers Licenses (CDLs). They are responsible for backing empty trucks up to the loading dock, and pulling loaded trucks back to the parking lot, which occurs about 60 to 70 times a night. The movement of the trucks by the yard jockeys is controlled by the shipping schedule generated by a warehouse clerk. The yard jockeys also move trucks owned by third parties which are loaded at the Employer's facility, and they move trucks from vendors which have to be unloaded.

C. Yard Jockey/Special Run

The Employer employs one yard jockey/special run employee. The yard jockey/special run reports to Driver Supervisors Fedeoff and Dalton. This employee performs yard jockey work as described above, but he also drives the special run truck (the "hot shot" truck) daily to Pittsburgh to service the Pittsburgh accounts outside of the regular delivery routes. This truck is loaded by the will-call selector, and the yard jockey/special run obtains the paperwork from the warehouse clerks.

D. Fleet Mechanic

The Employer employs five fleet mechanics. They report to Transportation Manager Reese. The garage is staffed 24 hours a day, five and one half days a week. The fleet mechanics are required to possess CDLs and perform maintenance on trucks and trailers based on issues identified by the drivers.

E. Fueler

The Employer employs one fueler. He works daylight and reports to Transportation Manager Reese. The fueler spends 30 to 40 percent of his time fueling vehicles; he also shuttles trucks off-site for repairs and works as a yard jockey.

F. Transportation Clerk

The Employer employs two transportation clerks. They report to Transportation Manager David Reese. They handle the clerical functions related to the backhaul and the will-call orders. One particular function is to transcribe any notes made by the drivers on the load maps so that the supervisors or managers can follow-up on driver problems or suggestions.

G. Traffic Dispatcher

The Employer employs one traffic dispatcher; the traffic dispatcher reports to Transportation Manager Reese. The traffic dispatcher assigns the drivers to the trucks and monitors the hours of service of the drivers to ensure Department of Transportation (DOT) compliance. The traffic dispatcher works closely with the routers. This employee generates the shipping schedule, on which is listed all routes, drivers, equipment, loaders and location of trucks.

H. Router

The Employer employs two routers. They work daylight and report to Transportation Manager Reese. They build the routes for each truck, and determine the sequence of the delivery stops. To do this, the routers use a software program and take into consideration such factors as the length of the route, the capacity of the trailers, the weight of the trailers, and the day and time required for delivery. The Employer considers this position the starting point for its delivery operations.

I. Finance Driver Check-In Clerk

The Employer employs one finance driver check-in clerk. As noted above, the record is not entirely clear in differentiating the duties of this position from the duties of the warehouse driver check-in clerk, which the parties agree should be included.

J. Inventory Control Clerk

The Employer employs one inventory control clerk. The inventory control clerk works daylight and reports to Inventory Control Manager Beth Zubalik, but has a dotted line reporting

relationship to Director of Operations Renze. The inventory control clerk spends about one to one and one-half hours per day in an office on the dock, and spends the rest of his time in the warehouse. In the warehouse, the inventory control clerk spends the majority of his day performing cycle counts, that is, counting products. He spends about 35 to 40 percent of his day searching for missing products. He also moves meats, poultry and fish from the cooler area to the freezer after a certain number of days.

With respect to missing product, at the beginning of the day, the inventory control clerk prints a "markout" report. A markout occurs when a selector is unable to locate product in the warehouse that the computer states is in inventory. The daily markout report identifies missing product based on information recorded the prior night. The inventory control clerk then tries to locate product, usually finding the product at the wrong location. If he locates the product, he puts it in the correct slot or has a warehouse employee move the product. The inventory control clerk drafts a report on his findings regarding the markouts. For example, if he discovers a pallet where it is not supposed to be, he identifies the warehouse employees that handled the pallet, and gives the warehouse supervisor a report which indicates what has occurred and requesting that the Warehouse Supervisor speak to the employees. However, there is no record evidence that these reports have adversely affected any warehouse employee. That is, there is no evidence of any employee being disciplined or suffering any decrease in pay as a result of these reports.

K. Produce QC Specialist

The Employer employs two produce QC specialists. They work daylight and report to the produce buyer, but have a dotted line reporting relationship to Director of Operations Renze. The produce QC specialists are responsible for checking all inbound produce to ensure that it meets the Employer's specifications and is acceptable. The produce QC specialists work in the receiving area of the dock, and may have to move pallets using a forklift. Once the produce QC specialists accept the produce, the receiver scans it in, handles the related paperwork, and

releases the produce to the lift operator. The produce QC specialists also check the quality of produce in the slots, and perform some counts for inventory control.

In addition, at the end of day, the produce QC specialists do special picks of produce for certain customers. These special picks come in through the will-call process. The will-call clerk generates special pick labels, and the produce QC specialists pick the produce using a forklift, build the pallet, wrap the pallet, tag it with the pick ticket, stage it, and mark it to designate the customer.

L. Building/Grounds Worker

The Employer employs five building/grounds workers. They report to Director of Operations Renze. They perform janitorial functions, such as cleaning, mopping, scrubbing, and sweeping throughout the warehouse. At least one of these employees also performs repairs on jacks and forklifts, and on equipment in the warehouse itself.

M. Maintenance Mechanic

The Employer employs one maintenance mechanic. He reports to Director of Operations Renze. The maintenance mechanic is informed of broken equipment by write-up sheets, or e-mails or direct contact. Depending on the nature of the repair, the work may be performed in the shop or in the warehouse.

IV. TERMS AND CONDITIONS OF EMPLOYMENT

Several aspects of the Employer's terms and conditions of employment are discussed below.

A. Hiring, Qualifications and Training

All jobs at the Employer's Greensburg facility are simultaneously posted both internally and externally. However, preference is given to internal applicants. Applicants are subject to a drug test, along with a DOT physical for drivers, and a physical for selectors.¹²

¹² The Employer is currently in the process of modifying this requirement, to add a cognitive test as well.

The qualifications for most of the warehouse positions merely state as a preference that the applicant have a high school diploma or a GED and some related experience.¹³ The qualifications for the delivery driver position also state a preference that the applicant have a high school diploma or GED. However, the driver must be able to read, write and communicate in English as it relates to the job and to the safety regulations. The driver must have basic math skills (add, subtract, multiply and divide). The driver must also have a CDL, Class A, and meet the medical requirements of the DOT. The driver should have a minimum of one year over-the-road commercial driving experience or six months of food or beverage delivery experience. The drivers must be 21 years of age.

Newly hired employees attend an orientation conducted by the Employer's Human Resources personnel, and a separate orientation conducted by the department where they will be working. As part of the orientation of newly hired drivers, the Employer tries to have the drivers work in the warehouse to see how product gets onto the trucks, and as part of the orientation of newly hired warehouse employees, the Employer tries to have warehouse employees ride with the drivers to see how warehouse jobs impact delivery. Newly hired warehouse employees are trained and certified on the equipment they will use in the warehouse, such as the pallet jacks, forklift and/or the cherry picker. Employees also receive training on food safety, DOT regulations, hazardous materials, general electrical safety, lockout/tagout procedures, personal protective equipment, and asset protection.

In addition to training for newly hired employees, the Employer also provides cross-training so that every position has an employee trained as a back-up to provide coverage during vacations or when the primary employee is otherwise absent. The Employer also wanted to pair loaders to ride with the drivers to try to generate suggestions for improvements, but has only been able to do this once or twice so far.

¹³ Some warehouse positions require related experience.

B. Wages and Benefits

The majority of the employees are under the Employer's pay for performance plan; this plan covers the drivers, selectors and lift operators. The remaining employees are paid hourly.¹⁴ The components which make up the pay for performance plan vary for each covered group of employees. Specifically, the drivers are paid on four components: 1) pieces or cases delivered at a rate of \$.20 each, 2) miles driven at a rate of \$.25 per mile, 3) stops included on a route at a rate of \$5 per stop, and 4) backhaul stops at a rate of \$20 per stop. The drivers' other work such as special deliveries and shuttles is paid at an hourly rate. If the pay for performance rate is less than the hourly rate the driver would have received, the driver receives the hourly rate.

The selector pay for performance program requires a selector to pick product for 60 percent of his clocked time, and is impacted by picking errors and shorts found. If the pay for performance rate is less than the hourly rate the selector would have received, the selector receives the hourly rate. The loader pay for performance program appears to be similar to the program covering selectors.

Thus, while it is apparent that the concept underlying the pay of the drivers, selectors and loaders is the same, it is equally apparent that the factors on which they are paid reflect the specific nature of their duties and are quite different. While the record contains the range of hourly pay rates for these job classifications, it does not contain the range of actual earnings, and thus on the facts available, a reliable comparison of the actual earnings cannot be made.

The Employer also has a safety incentive pay program for all warehouse employees and drivers, as well as a separate additional safety incentive pay program for drivers. The Employer pays a night shift differential for all employees working nights.

¹⁴ One router is salaried because he is the longest tenured employee in the facility and his compensation could not be increased on the hourly pay scale.

The Employer offers a variety of benefits on a corporate-wide basis, which are available to all hourly employees at the Greensburg facility: health benefits, paid holidays, vacations, pension, 401(k), sick leave and tuition reimbursement.¹⁵

C. Policies, Procedures and Facilities

All employees are provided with an employee handbook which sets forth corporate-wide policies and procedures applicable to all employees. In addition, all employees are subject to an attendance policy covering the Western Pennsylvania Division. All employees wear an ID access badge.¹⁶ All drivers wear the same uniform, and all daylight warehouse employees wear the same uniform, which is different than the drivers' uniform. The night shift warehouse employees have the option of wearing the warehouse uniform or their street clothes. All employees - regardless of job classification- wear appropriate safety gear, which includes steel-toed shoes for all employees working with the pallets, fluorescent gear for all employees walking on the dock, and cold weather gear for all employees working in the freezer.

The Employer has four Kronos timeclocks in the facility and employees use the timeclocks which are most convenient for them. There are two breakrooms available to employees¹⁷ and a wall that serves as an employee bulletin board. There appear to be two major office areas used by the employees at issue herein, the dock office and the transportation office. The dock office is used by the warehouse clerks, the receiver/slotter and the truck builder. The transportation office is used by the routers, the transportation clerks, the traffic dispatcher, the Driver Supervisors and Operations Director Renze.

¹⁵ The tuition reimbursement could be used by a warehouse employee to obtain a CDL, but there is no evidence that this has ever happened.

¹⁶ The warehouse employees and the drivers have the same access to the facility.

¹⁷ The drivers can use the breakroom before or after their shift.

D. Interaction and Computer

All of the disputed positions have varying degrees of work-related interaction with the agreed-upon positions, either face-to-face, or by phone or by e-mail. For example, the drivers receive their daily paperwork from the warehouse clericals, turn in money and checks to the driver check-in clerk, and discuss load problems with the selector/loaders. As another example, the selectors may notify the maintenance mechanic about a problem with a riding jack, or notify a building and grounds worker about a spill in the warehouse.

The Employer uses computer software in all aspects of its operations. For example, various computer software is used to build routes, to build truck loads, to generate pick labels, to generate load maps, to generate shipping schedules, to track products from receipt from vendors through loading on outbound trucks, to track inventory, to determine replenishment levels, to monitor driver hours, and to monitor truck locations. It appears that virtually all employees have some involvement with the computer system, whether using a computer in an office, a scan gun on the receiving dock, a scan gun or voice software in the warehouse, or the on-board computer in the delivery trucks.

In addition, the Employer has quarterly meetings attended by all employees. There is also a safety committee, which meets monthly, and includes drivers and warehouse employees. In addition to this work-related interaction, the Employer provides opportunities for all employees to socialize with each other; there is a truck rodeo and jack and lift rodeo, a Christmas party and a golf outing.

E. Interchange

While there is some work-related interaction among the employees, there is relatively little interchange between employees in the agreed-upon and disputed classifications. With specific regard to permanent interchange, the most recent transfer from a warehouse position to a driver position occurred about three years ago, and over the last 12 years, only about 10-11

warehouse employees have transferred to driver positions. In that same 12-year period, only one driver transferred to a warehouse position, as a lift operator.

With specific regard to temporary interchange, the only time that drivers work as warehouse employees is when they are restricted to a light duty work assignment, and those restrictions are compatible with the requirements of a warehouse job. This occurs about three to four times a year and lasts from two to 90 days.

Warehouse employees may be temporarily assigned to either make deliveries themselves using non-CDL vehicles or to ride with a driver to assist with unloading the truck. This occurs when vacations or call-offs cause fewer drivers to be available or when there are heavy delivery days, such as the first week of school. About a dozen warehouse employees have either made deliveries or assisted drivers, and this has occurred as often as once a week. However, the Employer did not produce any records of when warehouse employees performed driving-related functions and could not accurately estimate the frequency.

V. ANALYSIS

As previously stated, the Employer, contrary to the Petitioner, contends that the delivery driver, yard jockey, yard jockey/special run, transportation clerk, traffic dispatcher, router, fleet mechanic, fueler, finance driver check-in clerk, inventory control clerk, produce QC specialist, building/grounds worker, and maintenance mechanic must be included in the unit with the petitioned-for warehouse employees. The Employer argues that the unit sought by the Petitioner is not appropriate, and that the only appropriate unit would include the above-described classifications. In so arguing, the Employer asserts that the classifications it would include share a significant community of interest and are functionally integrated with the unit requested by the Petitioner. The warehouse-type unit sought here clearly is one that the Board traditionally finds to be an appropriate unit. See, e.g., Overnite Transportation Co., 331 NLRB 662, 663 (2000); Nuturn Corp., 235 NLRB 1139, 1140 fn. 4 (1978). However, the Employer argues that its operation is so functionally integrated that this traditional unit is no longer appropriate.

The Board discussed its position regarding appropriate units at length in Overnite Transportation Company, 322 NLRB 723 (1996). In that case, the employer sought to include mechanics in a unit of drivers and dock workers requested in the petition. The employer argued that the mechanics shared a sufficient community of interest to require their inclusion in the petitioned-for unit. The Board stated that it is well-settled that employees of an employer may be appropriately grouped in more than one way for the purposes of collective bargaining, and the Board's policy is to consider only whether the petitioned-for unit is appropriate. "There is nothing in the statute which requires that the unit for bargaining be the only appropriate unit, or the ultimate unit, or the most appropriate unit; the Act only requires that the unit be 'appropriate.'" Overnite Transportation Company, *id.*, quoting Morand Bros. Beverage Co., 91 NLRB 409, 418 (1950), *enfd. on other grounds* 190 F.2d 576 (7th Cir. 1951). Thus, a union is not required to seek the largest or most comprehensive grouping of employees, so long as the unit requested is an appropriate one. Overnite Transportation Company, *id.*

The Board's procedure for determining an appropriate unit under Section 9(b) is to examine first the petitioned-for unit. If that unit is appropriate, then the inquiry into the appropriate unit ends. If the petitioned-for unit is not appropriate, the Board may examine the alternative units suggested by the parties, and also has discretion to select an appropriate unit that is different from the alternative proposals of the parties. Overnite Transportation Company, 331 NLRB at 663. The Board generally attempts to select a unit that is the "smallest appropriate unit" encompassing the petitioned-for employee classifications. *Id.*

The Board weighs various factors when analyzing community of interest, including the following: methods of wages or compensation; hours of work; employment benefits; supervision; job qualifications, training and skills; job functions and amount of working time spent away from the site; contact with other employees; integration of job function and interchange with other employees; and history of bargaining. Overnite Transportation Company, 322 NLRB at 724, quoting Kalamazoo Paper Box Corp., 136 NLRB 134, 137 (1962).

A. Delivery Driver, Yard Jockey, Yard Jockey/Special Run, Fleet Mechanic and Fueler

With regard to the delivery drivers, the record reveals that they have qualifications separate from the employees in the petitioned-for unit. The drivers are required to possess a CDL and meet DOT requirements, they must be 21 years of age and be able to communicate with customers in English; the warehouse employees sought herein have no such special qualifications. The drivers' supervision is separate from the employees in the petitioned-for unit: the drivers report through Driver Supervisors to the Transportation Manager while the warehouse employees report through Warehouse Supervisors to the Warehouse Manager. The drivers are generally working days, while the vast bulk of the warehouse employees work nights.

The drivers spend almost their entire workday away from the facility, while the warehouse employees sought herein all work in the facility. The drivers wear a uniform while the night warehouse employees, who comprise most of the petitioned-for unit, are not required to wear a uniform. The drivers use the Xata software to track their hours of service for DOT compliance, and to enable the Employer to monitor the location of the trucks, while the warehouse employees in the petitioned-for unit have no comparable requirement. The drivers interact with customers, obtaining signed invoices, collecting cash and checks in payment, and completing credit slips; warehouse employees do not have any customer interaction. The drivers off-load their trucks using a two-wheeled dolly, whereas the warehouse employees in the petitioned-for unit use riding jacks and forklifts to move products. Simply, the drivers spend their day driving and making deliveries, while the bulk of the warehouse employees spend their nights moving product by forklifts, and by manually loading cases onto pallets.

The drivers have a separate wage scale from the warehouse employees. The drivers are paid based on factors particular to their jobs (cases moved, miles driven, customer stops and backhauls) while the warehouse employees are paid based on factors particular to their duties (percentage of time selecting and accuracy).

While the drivers have some contact with the warehouse employees before departing from, or upon their return to, the facility, such contacts are brief and minimal. During the times that drivers are waiting for their loads, they do not perform warehouse work. During the last 12 years, there has been only one occasion when a driver permanently transferred into a warehouse position. Further, the only times when drivers perform warehouse work on a temporary basis occur when drivers are injured and on light duty work, which occurs only about three to four times a year.

Similarly, there have been very few instances of warehouse employees permanently transferring to driver positions. Specifically, the most recent transfer of a warehouse employee to a driver position occurred about three years ago, and over the last 12 years, only about 10-11 warehouse employees transferred to driver positions. With regard to temporary transfers of warehouse employees to driver positions, the record does not disclose any such transfers.

The record does disclose, however, that warehouse employees occasionally assist drivers by making special runs using a non-CDL vehicle, or by riding with a driver to assist the driver with deliveries. This occurs when vacations or call offs cause fewer drivers to be available or when there are heavy delivery days, such as the first week of school. About a dozen warehouse employees have either made deliveries or assisted drivers, and this has occurred as often as once a week. However, the Employer did not produce any records of when warehouse employees perform driving-related functions and could not accurately estimate the frequency. Thus, it cannot be concluded that the amount of time during which a warehouse employee assisted a driver with deliveries or performed special runs is so significant as to require a finding of regular and frequent interchange between the drivers and the employees in the petitioned-for unit.

Notwithstanding the differences between the drivers and the warehouse employees sought herein which are detailed above, the record discloses some common terms and conditions of employment: similar Human Resources orientation, similar training, the same

employee handbook, the same attendance and safety incentive programs, common benefits, similar safety gear, the same timeclocks, the same breakrooms, and Employer-wide social functions. Also, all of the Employer's operations are centralized through its computer software, and the warehouse employees have varying degrees of interaction with the drivers.

With specific regard to the Employer's use of computer software to integrate its operations, this fact cannot obfuscate the reality that the warehouse employees perform functions separate and distinct from those of the drivers. That is, a focus on the details of the computer in the Employer's operation cannot be used to ignore the reality of what the employees are actually doing.

Based on the above and the record as a whole, I find that the delivery drivers do not share such a close community of interest with the warehouse employees sought in the petition as would mandate their inclusion in the petitioned-for unit. As described above, there are many factors which distinguish the delivery drivers from the requested warehouse employees. While a unit including the drivers with the warehouse employees might be an appropriate unit, the unit sought in the petition, excluding drivers, is also appropriate. The Board has frequently found a separate unit of truckdrivers to be an appropriate unit. See, e.g., Cal-Maine Farms, Inc., 249 NLRB 944 (1980); St. John's Associates, Inc., 166 NLRB 287 (1967); Mc-Mor-Han Trucking Co., 166 NLRB 700 (1967). The Board has repeatedly held that "[I]t is not the Board's function to compel all employees to be represented or unrepresented at the same time or to require that a labor organization represent employees it does not wish to represent, unless an appropriate unit does not otherwise exist." Overnite Transportation Company, 322 NLRB at 724, quoting Mc-Mor-Han Trucking Co., *supra*. It is well settled that more than one appropriate bargaining unit can exist in any particular factual setting. Overnite Transportation Company, *id.*, and cases cited therein.

Further, cases relied upon by the Employer are readily distinguishable from the situation presented herein. In five of the cases cited by the Employer, which are discussed below, the

facts showed substantial temporary and permanent interchange, a factor not present here.

While the Board has not singled out one factor as determinative, it is clear that the absence of this interchange, as in the present case, would lead to a very different result.

For example, in Standard Oil Company, 147 NLRB 1226 (1964) the employer operated a bulk fuel terminal and the petitioner sought a unit of 18 truckdrivers. The employer argued, and the Board found, that the appropriate unit must include eight plant clericals, two mechanics, one maintenance man and one laborer. In so finding, the Board noted that during the peak months of December, January and February, the drivers generally spent 75 percent of their time away from the plant driving. However, during the slack period from March to October, some plant clericals drove trucks and drivers frequently performed relief in clerical jobs. In fact, during a four-month period, four truckdrivers replaced clerks and performed all of the plant clerical duties, and did no driving.

In Calco Plating, 242 NLRB 1364 (1979), relied upon by the Employer herein, the employer was engaged in repairing and replating of automobile bumpers and the plating of manufactured metal products at its two plant facilities and warehouse. The petitioner requested a unit of all of the employer's 35 production and maintenance employees, excluding five truckdrivers. The Board found that the unit had to include the five truckdrivers. The record disclosed that one-half to two-thirds of the truckdrivers' time was spent in driving, but that one-third to one-half of the truckdrivers' time was spent at the employer's plants, working with production employees or in close proximity thereto. Specifically, the drivers regularly performed production work by assisting in the wrapping of replated bumpers and the pulling from inventory those bumpers scheduled for delivery as well as assisting in putting finished stock into inventory. Moreover, one driver, a former grinder, occasionally engaged in his former production job. Furthermore, the record also showed that production and maintenance employees performed drivers' work on a regular basis by assisting the truckdrivers in the loading and unloading of their trucks, making customer deliveries which were not ready in time

for the drivers' scheduled departure, and daily hauling bumpers and supplies between the employer's plants.

In Atchison Lumber & Logging, 215 NLRB 572 (1974), also cited by the Employer in its brief, the employer cut, prepared, and delivered logs to mill operators. The petitioner sought a unit of seven truckdrivers and the employer urged, and the Board agreed, the inclusion of 23 employees in other classifications. Although the primary function of the drivers was to haul logs from the loading areas to the mills, the truckdrivers were also utilized to perform duties of other crewmembers, such as limbing, skidding, removing chokers from logs, and working with or in place of the loader operator. Further, during spring "breakup," when roads were not usable for hauling, senior drivers were offered such employment as was available in other job classifications. In addition, the record revealed that most of the drivers had occupied other job classifications, and that some of the production and maintenance employees had previously been log-hauling drivers for the employer.

In Donald Carroll Metals, Inc., 185 NLRB 409 (1970), the employer was engaged in the production of zinc and aluminum ingots derived, in substantial part, from the reprocessing of scrap metals which were melted down in the employer's furnaces. In that case, the stipulated unit included 25 warehouse, production and maintenance employees, but did not specify the inclusion or exclusion of two truckdrivers. The Board included the truckdrivers in the unit finding they spent more than 25 percent of their worktime performing the same type of production work as was performed by other employees.

As a fifth example, in Boyden Logging, Inc., 164 NLRB 1069 (1967), the employer was a contract logger employing 14 employees, which included five truckdrivers. In finding an overall unit appropriate, the Board noted that the truckdrivers spent from five to 25 percent of their time performing road maintenance work, helping in the shop, and also working in the logging program.

As indicated above, there is no permanent or temporary interchange of delivery drivers and warehouse employees in the present case which is comparable to the cited cases. More on point are those cases cited herein in which the Board found separate warehouse or driver units appropriate.

Many of the comparisons of the drivers and the warehouse employees sought herein are equally applicable to the yard jockeys and the yard jockey/special run. The yard jockeys are required to possess CDLs, they work in the yard, moving trucks, and they report to the Driver Supervisors. The yard jockey/special run makes a daily delivery run to service Pittsburgh accounts. The yard jockeys are paid an hourly rate, and do not participate in the pay for performance program. There has been no interchange, either temporary or permanent, between the yard jockeys and the petitioned-for warehouse employees.

Once again, many of the comparisons of the drivers and the warehouse employees are equally applicable to the fleet mechanics and fueler. The fleet mechanics and fueler are required to possess CDLs and report to the Transportation Manager. Their work is focused on the trucks. The fleet mechanics and fueler are paid an hourly rate, and do not participate in the pay for performance program. There has been no interchange, either temporary or permanent, between the fleet mechanics or the fueler and the petitioned-for warehouse employees.

The record establishes that the functions of the yard jockeys, yard jockey/special run, fleet mechanics and fueler are closely aligned with the drivers, and bear little connection with the functions of the petitioned-for warehouse employees. Based on the above and the record as a whole, I find that the delivery drivers, yard jockeys, yard jockey/special run, fleet mechanics and fueler do not share such a close community of interest with the warehouse employees sought in the petition as would mandate their inclusion in the petitioned-for unit.

B. Transportation Clerk, Traffic Dispatcher and Router

As noted above, not only does the petitioned-for unit include the employees performing manual labor in the warehouse, but it also includes those clerical positions closely related to,

and supporting, the warehouse employees. The Employer asserts, however, that three other clerical positions must also be included in the unit: transportation clerk, traffic dispatcher, and router.

The transportation clerk, traffic dispatcher and router positions all report directly to Transportation Manager Reese, while the petitioned-for warehouse clerical employees report to Warehouse Supervisors, who in turn, report to the Warehouse Manager. The duties of the disputed employees are separate from the duties of the warehouse clerks. Specifically, the transportation clerks support the backhaul and will-call operations, the traffic dispatcher assigns the drivers to the trucks and monitors DOT hours of service, and the routers build the delivery routes.¹⁸ The warehouse clericals, on the other hand, support the inbound drivers and the warehouse operations. There has been no interchange, either temporary or permanent, between the transportation clerks, the traffic dispatcher and the routers and the petitioned-for warehouse clerks.

Based on the above and the record as a whole, I find that the transportation clerks, the traffic dispatcher and the routers do not share such a close community of interest with the warehouse employees sought in the petition as would mandate their inclusion in the petitioned-for unit.¹⁹

¹⁸ I do not find the router and the truck builder to be so closely related as to mandate the inclusion of the router in the petitioned-for unit. As noted, the router builds the routes for the drivers, while the truck builder builds the load maps used by the loaders and generates the pick labels used by the selectors.

¹⁹ In this regard, I am aware that the Decision and Direction of Election issued by Region 12 in Case 12-RC-9413, involving the same Employer, but a different distribution center, included two routers in the petitioned-for warehouse unit.

In the Region 12 case, however, it appeared that a lead router performed the functions performed by the routers in the instant case, and a backup router performed the functions performed by the truck builder in the present case. As set forth above, the truck builder in this case directly supports the warehouse employees, and is properly in the unit, while the router in

C. Building/Grounds Worker and Maintenance Mechanic

The building and grounds workers and the maintenance mechanic report directly to Operations Director Renze, while the petitioned-for employees report through two levels of supervision under Renze. The janitorial duties performed by the building and grounds workers and the equipment repair work performed by the maintenance mechanic have no counterpart in the petitioned-for unit. That is, there are no petitioned-for warehouse employees who perform janitorial functions or who repair equipment. Further, there is no record evidence that building and grounds workers or the maintenance mechanic ever fill in for warehouse employees or that they perform warehouse work if they are not busy with their janitorial or repair work.

Based on the above and the record as a whole, I find that the building and grounds workers and the maintenance mechanic do not share such a close community of interest with the warehouse employees sought in the petition as would mandate their inclusion in the petitioned-for unit.

D. Finance Driver Check-In Clerk

As noted above in Section II. E., the parties have agreed that the driver check-in clerk who reports to the Warehouse Supervisor is properly within the petitioned-for unit, but disagree on the inclusion of the driver check-in clerk who reports through finance. However, since the record does not permit me to determine which driver check-in clerk the parties intended to include and which they were unable to agree upon, I make no findings on the inclusion of the finance driver check-in clerk, and I shall permit the finance driver check-in clerk to vote subject to challenge in the election directed herein.

E. Inventory Control Clerk

The inventory control clerk reports through the finance department, and is primarily responsible for counting inventory and tracking down missing product, which has been most

this case directly supports the drivers who are excluded from the unit.

often put in the wrong place. As noted above, the inventory control clerk drafts a report on his findings regarding the markouts. For example, if he identifies a misplaced pallet, he identifies the warehouse employees that handled the pallet, and gives the Warehouse Supervisor a report which indicates what has occurred and asking the warehouse supervisor to speak to the employees. However, there is no record evidence that any other employees have been disciplined or that they have suffered any decrease in pay under the Employer's pay for performance program. In these circumstances, and noting that the inventory control clerk spends the bulk of his day in the warehouse using the same equipment and performing substantially similar duties to the petitioned-for warehouse employees, I shall include the inventory control clerk in the unit found appropriate herein.

F. Produce QC Specialist

The produce QC specialist position reports to the produce buyer. This position is responsible for checking both the quality of the incoming produce the quality of the produce in the slots, and for making special picks of produce. Thus, the produce QC specialist performs duties similar to the receiver, whom the parties agreed should be in the unit, and the produce QC specialist also performs duties similar to the selectors, whom the parties also agreed should be in the unit. In these circumstances, notwithstanding the differences between the produce QC specialist and the petitioned-for unit, such as the different supervision and the lack of interchange, I find that it is appropriate to include the produce QC specialist in the unit herein.

VI. FINDINGS AND CONCLUSIONS

Based upon the entire record in this matter and in accordance with the discussion above, I find and conclude as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this matter.

3. The Petitioner claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees²⁰ of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time warehouse employees, including the receiver, receiver/lift operator, receiver/slotter, will-call selector, warehouse driver check-in clerk, day warehouse clerk, truck builder, selector, selector/lift operator, selector/loader, selector/short runner, night warehouse clerk, produce QC specialist and the inventory control clerk employed by the Employer at its Greensburg, Pennsylvania facility, excluding all office clerical employees, delivery driver, yard jockey, yard jockey/special run, transportation clerk, traffic dispatcher, router, fleet mechanic, fueler, building/grounds worker, and maintenance mechanic and guards, professional employees and supervisors as defined in the Act.

VII. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by Teamsters, Chauffeurs, Warehousemen and Helpers, Local Union No. 30 a/w International Brotherhood of Teamsters. The date, time and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees

²⁰ As noted herein, I have determined that the finance driver check-in clerk will be permitted to vote subject to challenge in the election directed herein.

engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the Regional Office on or before **November 19, 2010**. No extension of time to file this list will be granted except in extraordinary

circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional Office by electronic filing through the Agency's website, www.nlr.gov,²¹ by mail, or by facsimile transmission at 412-395-5986. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Since the list will be made available to all parties to the election, please furnish a total of **two (2)** copies of the list, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for at least 3 working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

VIII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by **November 26, 2010**. The request may be

²¹ To file the eligibility list electronically, go to www.nlr.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu, and follow the detailed instructions.

filed electronically through E-Gov on the Agency's website, www.nlr.gov,²² but may not be filed by facsimile.

DATED: November 12, 2010

/s/Robert W. Chester

Robert W. Chester, Regional Director
NATIONAL LABOR RELATIONS BOARD
Region Six
William S. Moorhead Federal Building
1000 Liberty Avenue, Room 904
Pittsburgh, PA 15222

Classification Index

420-4601
420-5034
420-1760-6701
420-1760-6780

²² To file the request for review electronically, go to www.nlr.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu and follow the detailed instructions. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Agency's website, www.nlr.gov.